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QTA – A brief analysis of a critical issue in special education

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## Non-Public Placements: State Policies and Procedures

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### Introduction

This Quick Turn Around (QTA) summarizes information from 47 state education agencies (SEAs) on the issue of non-public placements for students with disabilities. For the purpose of this document, non-public placements are defined as educational programs operated by private entities that accept students whose tuition is funded by public agencies. Data collection for this QTA was conducted by Project Forum at the National Association of State Directors of Special Education (NASDSE) as part of its Cooperative Agreement with the U.S. Department of Education's Office of Special Education Programs (OSEP). Project Forum staff is grateful for the valuable assistance in this task provided by Dr. Linda F. Bluth of the Maryland Department of Education who has done considerable work in the area of non-public placements. She shared her experience on the topic and assisted in the development of the questionnaire.

### Background

The Individuals with Disabilities Education Act (IDEA) requires schools to provide a free and appropriate education in the least restrictive environment (LRE) to students with disabilities. IDEA defines least restrictive environment:

- (A) *IN GENERAL-To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. [20 U.S.C. 1412 (a)(5)(A)]*

Sometimes, in a small percentage of cases, the needs of individual students are such that it is necessary to send them to non-public placements. These settings are private day-schools or residential care facilities that may be sought because a public school district is unable to provide appropriate educational services for a particular student within its school settings.

The purpose of this Project Forum inquiry was to gather information from state education agencies (SEAs) about their policies, procedures and the many challenging issues related to the placement of students with disabilities in non-public settings, including setting of rates, funding

and monitoring. This information will allow SEAs and others interested in non-public placements to better understand the issues that confront states and provide a more meaningful perspective about non-public placements.

## **Methodology**

Project Forum developed a questionnaire that was mailed in September 2003 to the state directors of special education in all of the 50 states and 11 non-state jurisdictions.<sup>1</sup> Project Forum received completed questionnaires from 45 states and two non-state jurisdictions, for a total of 47 SEAs, from October through December 2003.

## **Report of Findings**

Currently, all 47 SEAs that responded to Project Forum's survey permit the placement of students with disabilities in out-of-state, non-public facilities. A summary of the findings follows. In addition, Appendices A and B present findings by state.

### *Approval of Facilities*

Non-public facilities may provide day programs where the student is transported to and from each day, residential programs where the student lives at least during the weeks of the school year, or a combination of these. Such facilities may be in-state or in a different state from that in which the student resides. A state may place a student in an out-of-state day program if it is possible to commute daily from the student's home to the facility within an acceptable amount of time and the program meets the student's individual educational needs in the least restrictive environment.

It is more common for SEAs to approve non-public facilities that are in-state than non-public facilities that are out-of-state. Of the 34 SEAs that approve in-state facilities, 29 approve of both day and residential programs, four approve only day programs, and one approves only residential. Of the 19 SEAs that approve out-of-state facilities, 12 approve facilities for both day and residential programs, five approve only residential programs and two approve only day programs.

### *Approval for Each Placement*

Thirteen of the 47 responding SEAs approve each placement of a student in both in-state and out-of-state non-public facilities. Fifteen reported that they approve each placement in an in-state facility and 14 approve each placement in an out-of-state facility.

### *Setting of Facility Rates*

Some SEAs have a "set rate" – a pre-established, non-negotiable amount that it will pay for a student's placement in a specific non-public facility. More SEAs set rates for non-public in-state

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<sup>1</sup> Hereafter referred to as SEAs.

placements (16 SEAs) than non-public, out-of-state placements (9 SEAs). There are a variety of methods for setting rates. For example, five states set rates unilaterally, meaning that the state determines how much it will pay for the cost of a student to attend a non-public placement; five SEAs set rates based on a per day reimbursement for education services only; five SEAs negotiate rates with each facility; and one SEA reported that rates are set based on the individual placement facility's budget or negotiated on the basis of prior year cost, revenues or other factors.

### *Approval of Funding Level for Specific Student*

Of the 47 responding SEAs, 16 approve the funding level for each placement of a student in-state and 15 approve the funding level for each placement out-of-state. The funding level is based on the costs for tuition and related services for a specific student rather than basing the funding level on a flat rate for the specific facility. For example, a student who uses a wheelchair may require physical therapy three times per week and this would be calculated into the funding level for that student.

### *Coverage of Costs*

It is more common for SEAs to pay for *part* of the cost of non-public placements than the *total* cost. Only one of the 47 SEAs reported paying the *total* cost all of the time and eight reported paying the *total* cost sometimes for both in-state and out-of-state. Twenty-nine SEAs reported paying *part* of the cost of in-state non-public placement all of the time or sometimes and 29 SEAs reported paying *part* of the cost all of the time or sometimes for out-of-state placements.

Other state agencies often help to defray the cost of non-public placements, both for those that are in-state and those that are out-of-state. Forty of the 47 SEAs reported that other state agencies pay a portion of the cost for an in-state non-public placement, while 38 SEAs reported cost sharing for out-of-state non-public placements. Other state agencies mentioned by respondents include the following: Departments of Health and Social Services, Health and Welfare, Human Resources, Corrections, Family Services, Mental Health/Mental Retardation, Comprehensive Services, the Bureau of Indian Affairs; the courts; Native American tribes; Medicaid; and Supplemental Security Income Disability.

SEAs described a variety of circumstances in which another state agency shares the cost for a non-public placement. For example, when a student is in foster care, is a ward of the court or is placed out-of-state for non-educational reasons by another agency, the SEA covers only the educational costs and the other state agency covers the non-educational costs.

### *Regulations and Policy Guidance*

Most of the states responding to the survey indicated that they have regulations that govern non-public placements, both in-state and out-of-state. Thirty-five SEAs have regulations for in-state placements, 33 for teacher certification and 31 SEAs have regulations for out-of-state placements. The least common area addressed by regulation was communication with facility staff (21 SEAs).

Non-regulatory policy guidance related to non-public placements was less common than regulations. The most common area addressed by policy guidance was communication with facility staff (18 SEAs) and the least common area addressed was out-of-state placements (12 SEAs). Table 1 summarizes survey findings about areas of state regulation and policy guidance. See Appendix B for survey findings by state.

Table 1  
Regulations and Policy Guidance Related to Non-Public Placements

<b>Issue/Area</b>	<b>Number of SEAs with Regulations</b>	<b>Number of SEAs with Policy Guidance</b>
In-state placements	35	14
Teacher certification	33	15
Out-of-state placements	31	12
Evaluation of the facility	24	16
Transportation to and from a facility	23	14
Monitoring of students at a facility	22	17
Communication with facility staff	21	18

*Monitoring of Placement*

Thirty-seven of the responding SEAs indicated that they monitor the placement of students with disabilities in non-public facilities, although not all were able to provide specifics as to the frequency of the monitoring or the manner in which it is conducted. State monitoring cycles range from once per year to every six years, with the most common cycles listed as yearly (11 SEAs) and every five years (8 SEAs). (See Table 2)

Table 2  
Monitoring Cycle

<b>Cycle in years</b>	<b>Number of SEAs</b>
1	11
2	2
3	5
4	2
5	8
6	1
Information not available	8

States that provided details about their monitoring procedures for non-public facilities reported some differences in approaches. Twenty-two SEAs conduct monitoring in-person/on-site and

seven conduct monitoring in-person/on-site and over the phone. Other specific monitoring activities used by one or more states as part of their in-person/on-site monitoring include conducting student file and record reviews, participating in the students' IEP meetings and managing the application and approval process.

*SEA Staff Time Devoted to Non-Public Placement*

Although staff time devoted to non-public placement varies considerably from state to state, 22 of the 38 SEAs responding to this questionnaire item indicated that they have at least one *full-time equivalent* (FTE) position devoted to this activity, while 16 SEAs devote .5 FTE or less. (See Table 3)

Table 3  
SEA Staff Time Devoted to Non-Public Placement

<b>FTE</b>	<b>Number of SEAs</b>
9-11	2
4-7	4
1-3	16
.5 or less	16

*Due Process Hearings/Court Cases*

Survey data from this study indicate that dispute resolution related to non-public placement is common across the country. Thirty-five of the 47 SEAs reported due process hearings or court cases in the last five years that involved non-public placements for students with disabilities.

**Concluding Remarks**

Given the strong emphasis of IDEA on placing students with disabilities in the least restrictive environment and the lower costs involved in keeping a student within the state, it was not surprising to find that approved non-public facilities are more likely to be in-state than out-of-state.

When it comes to non-public placements, regardless of whether the placement is in-state or out-of-state, a third of the responding states approve each placement, approve the funding level and set rates for students who are placed in these types of facilities.

In regard to funding of non-public placements, almost all of the responding SEAs share the costs with other state agencies. Exactly which agencies will share in the financial responsibilities of a student's placement depends on how students are placed (e.g., IEP process, court referral) or who is legally responsible (e.g., foster child who is a ward of the state).

Nearly two thirds of the responding SEAs reported regulations for in-state and/or out-of-state placements. Overall, non-regulatory policy guidance related to non-public placements is less common than state regulations. With increasing attention being paid to accountability for student

outcomes, there is likely to be growing interest in regulation and/or policy guidance related to monitoring of students in non-public facilities and communicating with staff at non-public facilities. As noted recently by Gagnon and McLaughlin (2004),<sup>2</sup> it is important for schools that serve students from other districts or states to increase collaboration in order to assure that curriculum and accountability measures are consistent with students' public and home schools.

There is likely to be interest in the dispute resolution information reported on this questionnaire because of the new requirement on the Annual Performance Report<sup>3</sup> for dispute resolution data from all states. The high number of states that have had due process hearings or court cases related to non-public placements points to the need for further examination of the reasons.

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<sup>2</sup> Gagnon, J.C. & McLaughlin, M.J. (2004). Curriculum, assessment, and accountability in day treatment and residential schools. *Exceptional Children*, 3, 263-283. Available on-line at:

<http://journals.sped.org/EC/Articles/Gagnon70-3.pdf>

<sup>3</sup> The most recent Annual Performance Reports from states were due to OSEP on March 31, 2004.

Appendix A  
Summary of Survey Findings by State

STATE	SEAs that approve each placement		SEAs that set facility rates		SEAs that approve funding level for a specific student		SEAs that pay the <i>total</i> cost all of the time or sometimes		SEAs that pay <i>part</i> of cost all of the time or sometimes	
	In <sup>1</sup>	Out	In	Out	In	Out	In	Out	In	Out
AK							x	x	x	x
AL			x	x			x	x		
AR			x	x						x
AZ	x	x	x		x	x			x	x
CA							x	x		
CNMI	x	x			x	x	x <sup>2</sup>	x		
CO			x		x				x	
CT			x	x					x	x
DE	x	x			x	x				
FL										
GA					x	x			x	x
HI										
IA		x								
ID									x	x
IL	x	x	x	x	x	x			x	x
IN					x	x	x		x	x
KS									x	x
KY									x	x
LA										
MA			x	x	x	x			x	x
MD			x	x	x	x			x	x
ME	x	x	x	x	x	x	x	x	x	x
MI										
MN									x	x
MO	x	x							x	x

<sup>1</sup> *In* refers to *in-state* placements and *Out* refers to *out-of-state* placements.

<sup>2</sup> CNMI is the only SEA that pays *all* of the cost for both *in-state* and *out-of-state* non-public placements.

STATE	SEAs that approve each placement		SEAs that set facility rates		SEAs that approve funding level for a specific student		SEAs that pay the <i>total</i> cost all of the time or sometimes		SEAs that pay <i>part</i> of cost all of the time or sometimes	
	In <sup>1</sup>	Out	In	Out	In	Out	In	Out	In	Out
MS	x	x			x	x			x	x
MT			x							
NC									x	x
ND	x	x							x	x
NE										
NH			x						x	x
NJ			x							
NM	x	x			x	x	x	x	x	x
NV										
NY	x	x	x	x	x	x			x	x
OH					x	x			x	x
OK										
OR	x							x		
PA							x	x	x	x
RI									x	x
SC	x	x							x	x
SD	x	x	x						x	x
TN	x						x	x		
TX									x	x
UT										
VA										
VT	x	x	x		x	x			x	x
WA										
WI										
WV										
WY			x	x	x	x			x	x
<b>Total</b>	<b>15</b>	<b>14</b>	<b>16</b>	<b>9</b>	<b>16</b>	<b>15</b>	<b>9</b>	<b>9</b>	<b>29</b>	<b>29</b>

Appendix B  
Regulations and Policy Guidance Related to Non-Public Placements

<b>Issue/Area</b>	<b>Regulations</b>	<b>Total</b>	<b>Policy/Guidance</b>	<b>Total</b>
In state placements	AR, AZ CA, CO, DE, FL, GA, IA, ID, IL, IN, KS, MA, MD, ME, MO, MN, MS, MT, NC, ND, NH, NJ, NY, OR, PA, RI, SC, TX, VA, VT, WA, WI, WV, WY	35	AZ, CO, HI, ID, IL, IN, KS, MN, MS, NC, NM, OH, OR, VI	14
Teacher certification in the facility	AL, AR, AZ, CA, CO, CT, FL, IA, ID, IL, IN, KS, KY, MA, MD, ME, MN, MO, MS, NC, ND, NH, NJ, NY, OR, PA, RI, TN, VA, VT, VI, WA, WY	33	CT, GA, HI, ID, IL, IN, KS, MN, NC, NM, OH, SC, TX, VI, WI	15
Out-of-state placements	AR, AZ, CA, DE, FL, GA, IA, IL, IN, KS, MA, MD, ME, MN, MO, MS, MT, NC, ND, NH, NJ, NY, OR, RI, SC, TX, VA, VT, WA, WV, WY	31	AZ, HI, IL, IN, KS, MN, MS, NC, NM, OH, PA, VI	12
Evaluation of the facility	AL, AZ, CA, CO, CT, FL, IA, ID, IL, MA, MD, ME, MN, MO, NH, NJ, OR, PA, SC, TN, VA, VT, WA, WY	24	AR, CO, CT, GA, HI, ID, MN, MS, MT, NC, NM, NY, OH, RI, TX, VI	16
Transportation to and from a facility	AR, CA, DE, FL, GA, IA, IL, IN, KS, MA, MD, ME, MN, MO, ND, NH, NJ, NY, OR, RI, TX, VA	23	CNMI, HI, IN, KS, MN, MS, NC, NM, OH, PA, VI, VT, WV, WA	14
Monitoring of students at a facility	AL, AZ, CA, DE, FL, GA, IA, IN, IL, KS, MA, MD, ME, MN, MO, NC, NJ, PA, RI, TN, VT, WY	22	AR, AZ, GA, HI, IN, ID, KS, MN, MS, MT, NC, NH, NM, OH, SD, TX, VI	17
Communication with facility staff	AR, FL, IA, ID, IL, IN, KS, MA, MD, ME, MN, MO, NJ, NY, SC, TX, VA, WI, WV, WY, MA	21	AZ, CO, GA, HI, ID, IN, KS, MN, MS, NC, NH, NM, OH, PA, RI, VI, VT, WA	18